FILED
JAN 28 1998
CLERK

No. 97-877

In The

Supreme Court of the United States

October Term, 1997

ELIZABETH R. COCKRELL,

Petitioner,

-vs-

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF AMICUS CURIAE OF RICHARD BECK, THE NATIONAL TAXPAYERS UNION, WOMEN'S BAR ASSOCIATION OF THE STATE OF NEW YORK AND NATIONAL ORGANIZATION FOR WOMEN FOUNDATION IN SUPPORT OF PETITIONER

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PERMISSION TO FILE BRIEF AS AMICI CURIAE

Richard Beck, The National Taxpayers Union, the Women's Bar Association of the State of New York and The National Organization for Women Foundation file this brief as *amici curiae* in support of Petitioner, pursuant to Sup. Ct. Rule 37.2. A letter of Respondent, dated January 21, 1998, and a letter of Petitioner, dated January 21, 1998, by which counsel for the parties evidenced their consent to the filing of this brief have been filed with this Court.

INTERESTS OF AMICI CURIAE

Richard Beck is a law professor who has written extensively on innocent spouse issues. He is taking no fee and has no financial interest in this case.[1]

The National Taxpayers Union is a non-profit public interest organization devoted to the advancement of justice for taxpayers.

The Women's Bar Association of the State of New York ("WBASNY") is the largest bar association in the United States specifically devoted to the advancement of the rights of women. WBASNY and its fifteen chapters, representing localities throughout the State of New York, are committed to promoting fairness and equality in the study, practice and application of the law. WBASNY is a progressive force, actively involved in molding public policy and advancing legal reform. WBASNY is dedicated to the professional and personal advancement of women and the pursuit of justice in our judicial system and society at large.

The National Organization for Women Foundation is a 501(c)(3) organization devoted to furthering women's rights through education and litigation. NOW Foundation is affiliated with the National Organization for Women, the largest feminist organization in the United States, with a membership of over 200,000 women and men in more than 500 chapters in all 50 states and the District of Columbia. Since its inception in 1986, a major goal of NOW Foundation has been to ensure equal opportunities and fair treatment for women, including particularly the rights of women during marriage and after divorce.

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[1] Pursuant to Rule 37.6, of the rules of this Court: Richard Beck is the sole author of this brief, and he worked *pro bono*. Printing costs were paid by Petitioner.

SUMMARY OF THE ARGUMENT

The United States is virtually the only country in the world which forces separated and divorced women to pay their ex-husbands' taxes. Joint return liability was not and cannot be justified by the alleged benefits of joint filing, nor by any other coherent principle. An estimated ninety per cent of the victims of joint liability are women[2] despite the fact that the benefits of joint filing, if any, are largely enjoyed by their husbands. The IRS routinely pursues women, as in Petitioner's case, even when they cannot pay, and without any attempt to find or tax the husband who is responsible for the deficiency.

The problem is an urgent one. By the government's own estimate as many as 75,000 women per year are unfairly forced to pay their ex-husbands' taxes every year for no reason except that they signed joint returns.

As a relief measure, the innocent spouse rules should be liberally construed in favor of taxpayers. And because the underlying liability is itself ill-founded and unfair, liberal construction of the relief rules is *a fortiori* necessary.

Congress never intended to impose any "duty of inquiry" into the accuracy of the husband's tax items on a joint return as if the wife were an auditor, and it is unreasonable for the courts to invent and impose any such duty on their own. The "knowledge" test of Section 6013(e)(1)(C) must in any event be tempered by a rule of reason or proportionality to prevent minor failures of proof from being punished with catastrophically unfair consequences. We think Congress intended the wife to prevail if "under all the facts and circumstances it would be inequitable" to deny her relief, even in cases where the wife may have had

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[2] For that reason we refer hereinafter to the non-earning spouse who is pursed under joint return liability as the "wife." Although the rule of joint return liability is gender-neutral as drafted in Section 6013(d)(3), its effects are dramatically injurious to women.

some difficulty meeting her high burden of proof under Section 6013(e)(1)(C).

Finally we think it *per se* inequitable for the IRS to pursue the wife before attempting to collect from the husband who caused the deficiency. In cases where the size of the assessment is likely to cause great hardship, as in Petitioner's case, it is a shocking abuse of power.

The split in the circuits caused by the Second Circuit's decision affords the Court a timely opportunity to interpret the innocent spouse rules so as to stop the IRS from persecuting tens of thousands of women every year. The Court has never decided an innocent spouse case before, and it is time to do so now.

I. NATURE AND HISTORY OF JOINT AND SEVERAL LIABILITY.

A. JOINT AND SEVERAL LIABILITY IS AN UNFAIR BURDEN UPON WOMEN WHICH IS UNIQUE TO THE UNITED STATES.

Approximately 95% of married taxpayers file jointly each year because filing separately usually results in a higher tax. Very few taxpayers are aware, or have any reason to be aware, that by doing so they incur joint and several liability. There is no joint liability clause at all on the Form 1040 itself, not even in fine print, much less the salient warning that such a risk deserves. Nor does it appear that tax preparers or divorce lawyers generally take this liability into account.

A 1997 General Accounting Office("GAO") Report estimates that there are about 80,000 instances per year of potential collections through Section 6013(d), that is to say collections

from the wrong spouse, *after divorce*.[3] The GAO Report found that few taxpayers apply for innocent spouse relief, in part because there are no IRS forms or procedures to apply, and that the relatively few claims which are made are mostly denied at the administrative level for purported failure to prove "no reason to know" of the husband's understatement under Section 6013(e)(1)(C). Most petitioners also lose in Tax Court because of the same "reason to know" test which is at issue here.

There are now over 600 reported court decisions involving spouses attempting to resist joint liability through the "innocent spouse" rules which were enacted in 1971, and in the last few years the Tax Court alone has averaged over 50 decisions per year.

Over 90% of the victims of joint liability collections are women. According to the GAO Report, the IRS usually attempts collection from whichever spouse it finds first. This has a significantly negative effect upon women, because after divorce the wife often remains at the marital address on the joint return, and the IRS will often look no further, even if the victim tells the IRS where to find her ex-husband. Petitioner's case is all too typical: the IRS clearly knows Mr. Crowley's whereabouts, and has apparently done nothing to collect from him.

No other developed country in the world imposes joint and several liability for income taxes, including countries which also offer income-splitting on joint returns.[4] In countries which once imposed such liability, it has been repealed as unfair and

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[3] GAO Report B-271456, "Information on the Joint and Several Liability Standard," March 12, 1997.

[4] France is a partial exception, but its spousal collection powers are used far more sparingly. See Beck, Richard, "The Innocent Spouse Problem: Joint and Several Liability Should be Repealed," 43 Vand. L. Rev. 317, 382-89 (1990).

inconsistent with modern women's rights to economic independence.

In fact joint and several liability was completely unjustified when first enacted in the U.S. in 1938. An unforeseen explosion in divorce rates, combined with extreme aggressiveness on the part of the IRS, have created a major national problem.

In 1995, after many years' study of the problem, the American Bar Association recommended to Congress that it repeal joint liability (1995-2 ABA Reports 8E) because it is unfair and unjustified. In 1996, Congress began holding hearings on the desirability of repeal, and commissioned two studies of the feasibility of repeal, one the GAO Report cited above, and the other, as yet unfinished, from the IRS.

B. JOINT RETURN LIABILITY WAS NOT AND CANNOT BE JUSTIFIED BY THE ALLEGED BENEFITS OF JOINT FILING, NOR BY ANY OTHER COHERENT PRINCIPLE.

The rule of joint return liability was first enacted in 1938 to overrule the Ninth Circuit's decision in *Cole v. Commissioner*, 81 F.2d 485 (9th Cir. 1935). In *Cole* a large tax deficiency due entirely to the wife's substantial separate income could not be collected from her because the Bureau of Internal Revenue had assessed her husband instead, and negligently allowed the statute of limitations to run as to the wife. When it discovered its error, the Bureau then continued trying to collect from the husband, on the wholly invented theory that filing jointly entails joint and several liability. The government argued in *Cole* that "administrative necessity" required joint and several liability because joint returns do not explicitly set forth the respective separate incomes and deductions of the spouses,[5] and that

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[5] The argument seems not to have been made in good faith, however, because at that very same time, the Treasury was promulgating regulations

without joint liability it would be unable to determine the amount each spouse should pay.[6] The Ninth Circuit rejected this argument because the separate liabilities of the spouses were in fact stipulated in *Cole*, and then noted that if a case should arise in which some doubt actually existed, the Bureau remained free to assess both spouses and let them prove their respective incomes. The court then offered a farsighted conclusion that Congress would have done well to heed:

> One of the fundamental principles of taxation is that the incidence of a tax should be in accordance with the ability to pay. In income taxation, this means that the tax should be levied in proportion to income. That is all which the petitioner herein asks. If this cardinal principle is followed, justice will be done.

After its loss in *Cole*, the Bureau urged Congress to enact joint and several liability, which Congress did in 1938. The only explanation put forth in the committee reports was the same "administrative necessity" which had been rejected in *Cole*. Thus Congress' intention seems to have been to prevent a perceived unjust enrichment of still-married couples in cases

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which would limit charitable deductions on joint returns to 15% of the donor spouse's *separate* net income, which necessarily involved the very same calculations of separate incomes which the government argued it was powerless to make in *Cole*. For details, see Beck, *id.* at pp. 343-47. It is also noteworthy that in the approximately 600 reported innocent spouse cases, determining whether an erroneous item is attributable to the husband under Section 6013(e)(1)(B) is virtually never an issue despite the fact that a purported "difficulty" in determining which items are whose on a joint return was the only reason ever offered by the government for imposing joint return liability.

[6] The Bureau apparently did not consider the obvious expedient of rewriting its joint return forms for taxpayers to disclose two columns of income and expense, one for each spouse.

where the Bureau negligently failed to assess the correct spouse, as in *Cole*.

Joint and several liability was far too broad a solution to the perceived problem, if indeed there ever was a problem at all. A much better and more focused solution, for example, might have been to authorize an extended statute of limitations applicable to a taxpayer if he has notice of an incorrect assessment against his spouse.

At any rate, Congress improvidently handed the Bureau a blank check which it gradually emboldened itself to employ - and abuse - in situations very far removed from its original purpose. The current application of section 6013(d) to separated and divorced women seems entirely unintended. None of the half dozen cases decided before 1938, including *Cole*, involved divorce, nor could the postwar explosion in divorce rates have been foreseen in 1938.

Pursuing divorced women for their husbands' taxes without even attempting to collect from the husband is simply an abuse of power.

Ironically, Section 6013(d) collections now *create* unjust enrichments between ex-spouses, whereas the provision was originally enacted to *prevent* unjust enrichments in cases of intact marriages.

Adequate reasons for imposing joint and several liability have never been provided. Contrary to widely held belief, joint return liability was not enacted as the "price one must pay" for lower tax rates on joint returns.[7]

Joint returns were first introduced in 1918, apparently for the sole purpose of convenience both for taxpayers and for the government, and provided no special rates or privileges for married persons. The favorable tax rates for joint returns computed by income-splitting were not introduced until 1948,

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[7] The error is widely repeated, even in court decisions, see e.g. *Stevens v. Comm'r* 872 F.2d 1499 (11th Cir. 1989).

some 10 years after enactment of joint liability. Income-splitting was not enacted as a reward for assuming joint return liability, but for the entirely different purpose of equalizing the tax burden between the common law states and the community property states, where income-splitting was already allowed on separate returns under the doctrine of *Poe v. Seaborn*, 282 U.S. 101 (1930).

The quid-pro-quo justification for joint return liability is as weak logically as it is historically. The tax advantage of joint filing is quite modest (except in rare cases). But even this "advantage" exists only when compared with the punitive rates applicable to married persons filing separately. For nearly half of all couples, joint returns require higher taxes (the "marriage penalty") than the couple would pay if they were not married at all.[8]

Moreover, the size of the alleged benefits of joint filing bears no relation to the joint return liability assumed, which may be unlimited in amount. The benefit explanation cannot justify joint liability for an amount greater than the tax saving from filing jointly.

Finally, the "benefits" usually inure to the husband, while the liability almost always is borne by the wife. Joint return liability is not only unfair in principle, it is highly discriminatory against women as applied.

A second rationalization for joint liability is that the married couple is an economic unit, and as it shares its income and assets it should share its tax burden.[9] However, there is no evidence that couples who file jointly share assets any more than

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[8] According to the Congressional Budget Office, for the year 1996, 42% of married couples owed an average of $ 1,400 more in taxes than if they had been single, and 51 % received an average "marriage bonus" of $ 1,300.

[9] The GAO Report repeats this as well as the income-splitting canard at p. 2.

those who file separately.[10] In any case, it is ludicrous to apply the one-pocketbook theory of marriage to couples who have already divorced and divided their assets.

II. THE INNOCENT SPOUSE RULES

In 1971, Congress enacted the innocent spouse rules codified at Section 6013(e) in response to some astonishingly harsh decisions of the Tax Court. In *Scudder v. Commissioner*, 405 F.2d 222 (6th Cir. 1968), *rev'g* 48 T.C. 36 (1967) the Tax Court held the wife liable for huge amounts of tax on her husband's embezzlements which he had concealed from her and spent on other women, and where the business from which he embezzled was owned by the wife and her sisters! The Sixth Circuit reversed *Scudder* and several other Tax Court decisions on the ingenious theory that if the wife did not know of or profit from the embezzlements, her signature to the joint return was void as to such items because it was procured by the husband's fraud.

The statutory relief rules were narrowly drafted to do little more than codify the Sixth Circuit's *ad hoc* approach in *Scudder*. Congress gave little, if any, thought to other situations in which relief should be granted, nor did it reexamine the appropriateness of joint liability itself. As a result, the innocent spouse rules are oddly restrictive, and in many respects illogical. For example, relief is generally not available if the husband simply fails to pay his taxes, or makes an honest mistake as to the law. He must have done something *wrong* which he concealed from his wife.

The innocent spouse rules exempt a spouse from joint return liability under Section 6013(e)(1) if she establishes that (A) a joint return has been filed; (B) the return contained a substantial understatement of tax attributable to grossly erroneous items of her husband; (C) in signing the return, she did not know, and

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[10] Beck at 377-82.

had no reason to know of the understatement; and (D) taking into account all the facts and circumstances, it is inequitable to hold her liable for the deficiency attributable to the understatement. The burden of proof as to all items is on the petitioner for relief, and she must prove each element.

A. A WIFE IS NOT AN AUDITOR, AND HAS NO DUTY TO INQUIRE

The most difficult test for the wife is that she must prove that at the time of signing the return, she did not know, and had no reason to know, that there was an understatement. This "innocence" test, which is at the heart of the relief rules, is illogical and inappropriate as a basis for relief. Ordinarily, a reason to know (or due diligence) test is applied in the context of assessing whether a person who is in a position to prevent foreseeable harm to others has breached a duty of care. In this tax context, however, the duty of care arises from the relief rules themselves, rather than from any preexisting and independently justifiable duty.

If the wife does not sign the return, the government is not helped in any way, because the husband can simply file his own erroneous return. The IRS cannot plausibly claim that it relies on the wife's signature to certify the accuracy of the husband's income, as if she were an auditor. It cannot help knowing what everyone else knows, that women do not feel they have any such duty, and do not act as if they did. The government does nothing to make women aware of their liability. Just the opposite. The Form 1040 contains no assumption of liability clause, not even in fine print. If the government actually wanted women to know of and act upon their supposed duty of care, it would put a prominent warning at the signature line. Instead, by concealing the wife's liability, the government deliberately sets a deadly trap.

Even if a wife is aware of her supposed "duty" of inquiry, the penalty for its breach is inappropriate and unfair. If a professional return preparer or an IRS agent fails to use due diligence, he does not become liable for the tax deficiency he could reasonably have been expected to discover on someone else's return. And yet the IRS does rely upon the tax expertise and professional responsibility of such persons.

The tax term "innocent spouse" was evidently borrowed from the matrimonial law of the 1960s where rights to divorce or alimony depended upon marital "fault" or "innocence" in matters such as adultery. This importation into tax terminology was unfortunate and misleading because the wife who fails the knowledge or equity tests of Sections 6013(e)(1)(C) or (D) is no more "guilty" of any "fault" than one who fails the dollar limitations of Section 6013(e)(3). A wife who becomes aware of her husband's tax cheating has done nothing wrong herself. No one suggests a wife in this position should denounce her husband to the IRS; all she is expected to do is file separately. Bizarrely, it does not even count in her favor if she attempts to dissuade her husband from cheating - instead it usually counts *against* her because it proves she had the forbidden knowledge! See *Shea v. Commissioner*, 780 F.2d 561 (1985). Almost always, the wife who cannot qualify under the innocent spouse rules is guilty of only one thing: having signed a joint return.

According to numerous unfortunate decisions the wife is supposedly put on notice that something may be amiss in the husband's taxes by such factors as unusual or lavish expenditures or a reported income which is suspiciously low in relation to the couple's lifestyle, and such notice triggers a duty to inquire further. See *Sanders v. United States*, 509 F.2d 162 (5th Cir. 1975). However, this purported duty of inquiry cannot be found in the Code, or the legislative history, or even the Treasury Regulations which are altogether silent on the crucial question of interpreting Section 6013(e)(1)(C).

It is noteworthy that no reported decision suggests that a wife must go so far as to consult an outside tax expert of her own as to the law,[11] or a private detective, say, regarding possible unreported income. In short, no court asks the wife to discover the true facts or determine the precise legal character of her husband's acts. The deepest inquiry which any reported decision would impose is for her simply to ask her husband whether the tax return is correct. As Petitioner correctly points out, and as the Seventh, Eight, Ninth and Eleventh Circuits have held with respect to tax shelters, such an inquiry is pointless if she already knows that her husband will tell her that the return is correct.

We think the best explanation of what Congress meant by Section 6013(e)(1)(C) is that the wife must not have *actual knowledge* of a *non-tax* transaction, such as the embezzling in *Scudder*, which is of a kind that a reasonable person would have "reason to know" would lead to an *understatement of tax*. In the *Scudder* situation, actual knowledge of the embezzling might give rise to "reason to know" of a deficiency because embezzlers do not ordinarily report their income from embezzling.

Under this interpretation there is no duty to review the return itself, much less any duty to make inquiries on the basis of items found in the return. This explanation of Congress' intent has the merit of a direct grounding in the *Scudder* decision which was the model for the innocent spouse rules, and it imports a minimum of illogic into the statutory language. It comports also with the "grossly erroneous" test under Section 6013(e)(2) which in effect limits relief to situations in which the husband has done something wrong. In the first 1971 version of the rules, only omissions of income qualified for relief.

When Congress extended relief in 1984 to items of deduction, credit or basis, it limited relief to items having "no basis in fact or law," a phrase which has baffled the courts and

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[11] See *Friedman v. Comm'r*, 53 F. 3d 523 (2d Cir. 1995)(wife is not required to seek independent tax counsel).

commentators. Whatever the phrase may mean exactly, it clearly was intended to limit relief to cases in which the husband has done something *wrong*, as in the omission cases. Because the "reason to know" language is equally applicable to deductions, it seems reasonable to apply the same test as for omitted income. Thus to be liable, the wife must have *actual knowledge* of a transaction or facts which in and of themselves appear wrongful and which would lead a reasonable person to expect an understatement without reviewing the return and without further inquiry. Examples might include the wife's knowledge that the husband intended to claim losses which are identical to those which she knew had already been proven phoney in a prior year, or knowledge that he intended to deduct gambling losses and to prove them by other people's losing tickets which she observed him picking up at the track.

B. THE EQUITY TEST IS A RULE OF REASON OR OVERALL FAIRNESS, AND THE IRS VIOLATES IT WHENEVER IT DOES NOT ATTEMPT COLLECTION FROM THE HUSBAND FIRST.

Under the equity test, the wife must prove that under all the facts and circumstances, it would be inequitable to hold her liable. The principal question is whether the wife benefitted from the understatement over and above ordinary support. Other factors which have occasionally been taken into account are whether the wife has been deserted or divorced,[12] and whether she was overreached or deceived, as in *Scudder.*[13]

There is ample support both in the statutory language itself and in the case law for the common-sense proposition that

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[12] Reg. 1.6013-(5)(b). See also *Mysse v. Comm'r*, 57 T.C. 680 (1972)

[13] See *Purcell v. Comm'r*, 826 F.2d 470 (6th Cir. 1987).

equity requires the size of any benefits received to be balanced against the size of the understatement, and that the wife's financial hardship should be taken into account in determining whether to impose liability. For example, in *Estate of Brown v. Commissioner*, 55 T.C.M. 1249 (1988), a wife was given relief on the explicit ground that the $500,000 deficiency was "utterly disparate" when compared to the (apparently not inconsiderable) property she had received pursuant to her divorce. Similarly in *Dakil v. Commissioner*, 496 F.2d 431 (10th Cir. 1974) the court exonerated a widow because of the size of the assessment, despite evidence she had significantly benefitted during marriage, with these words: "The unnecessarily harsh attempt to collect from her individually the tax liabilities of her husband should never have been made, and having been made, should be cast into oblivion. Even a tax collector should have some heart." See also *Terzian v. Commissioner*, 72 T.C. 1164 (1979).

The reported decisions are unanimous in reciting that the wife must prove separately that she qualifies under both the knowledge and the equity tests of Section 6013(e)(1)(C) and (D), and that failure to prove one is fatal to relief even if she proves the other. After making this ritual assertion, however, many courts then go on to ignore it in the decisions themselves for a very good reason. There are often circumstances where it would be inequitable to tax the wife even if she knew of the husband's tax malfeasance. For example, in *Hayes v. Commissioner*, 57 T.C.M. 869 (1989) the Tax Court granted relief to a deserted and impecunious wife whose husband failed to declare his wages and had denied to her that he was working. She herself verified the fact that he was working, and had good reason to suppose he was hiding his wages from the IRS as well as from herself. See also *Ratana v. Commissioner*, 662 F.2d 220 (4th Cir. 1981), where a religious and hardworking mother was exonerated despite undisputed knowledge of her husband's unreported income, and *Quint v. Commissioner*, 49 T.C.M. 1465 (1985), where the wife was exonerated although she knew of her

husband's defalcations, on the ground that she believed the funds had been repaid.

We think that Congress clearly intended the overriding criterion for relief to be equity under the circumstances. The alleged rule that the "knowledge" and "equity" tests must be applied disjunctively has no basis other than clumsy draftsmanship in the statute. It is an impermissible interpretation because it implies the absurdity that Congress expressly intended to permit inequitable decisions. If an assessment is so disproportionate as to dwarf any benefit the wife may have received and will threaten her with serious hardship, clearly the potential harm must be balanced against her knowledge under Section 6013(e)(1)(C) by weighing the nature, degree, and probability of her awareness. It is difficult to believe that Congress could have intended otherwise.

As applied to Petitioner's case, this rule of reason provides a second ground for exoneration because the assessment is completely beyond her means and will simply bankrupt her. Even if one accepted the government's view that Petitioner received some benefit or that she was not entirely unaware, which we do not, the alleged knowledge and/or benefit is so minimal that the punishment is utterly unconscionable.

The IRS often pursues the wife exclusively, even in cases where she obviously lacks the means to pay the assessment and will simply be driven into bankruptcy as a result of an IRS victory, as in Petitioner's case.

According to the GAO Report, the IRS lacks any internal records or procedures to determine whether collection would be easier from the husband. The reported decisions never explain why the husband is not pursued, although in many the husband seems solvent and available and sometimes even testifies in the litigation, as in the case at bar. See also the outrageous decision in *Cohen v. Commissioner*, 54 T.C.M. 944 (1987), where a divorced schoolteacher was held liable for her husband's tax shelter, though the husband was a CPA and a tax partner in the

firm of Peat, Marwick. In response to Ms. Cohen's question why she was being pursued rather than the husband, the court told her that the IRS can choose as it pleases, and added that she would have the right to collect from her husband afterwards in a separate lawsuit for contribution!

We think that it is *per se* inequitable for the IRS to pursue the wife without first exhausting possible collection efforts against the husband, and that the equity test of Section 6013(e)(1)(D) can and should be read to say so in all cases. At the very least this should be the rule if the assessment is so large as to cause hardship. We would define hardship in the same way as "substantial understatement" under Section 6013(e)(4), because that specifies the level at which Congress thought some escape valve to be necessary, namely, where the assessment exceeds 10% of the wife's gross income for the preceding year, or 25% if her income exceeds $ 20,000.

It is not easy to think of any reason why the IRS should be allowed to employ its Section 6013(d)(3) collection powers to create such unfair and unreasonable hardship as in Petitioner's case without first establishing at least some minimum showing of need. *Congress did not intend the IRS to use joint liability for the gratuitous and irresponsible persecution of women.*

We think the IRS might actually collect more revenue at less cost if it stopped using joint liability altogether, although the IRS own failure to keep records makes this hard to prove. Some *amici* have seen in our own work the IRS waste taxpayer money pursuing single mothers on public relief for assessments they could not possibly pay. Petitioner's case is the same writ large: if the government wins, it will succeed only in bankrupting Petitioner at enormous cost to all involved, and then if it wants actually to collect its taxes it will have to look to the ex-husband Mr. Crowley, which is where the IRS should have started and ended.

CONCLUSION

The Second Circuit's decision should be reversed on the ground that it misinterpreted the innocent spouse rules, as well as on the ground of government misconduct described in Petitioner's brief. Petitioner had no knowledge or reason to know that Mr. Crowley's tax shelter deductions were illegitimate, and no duty to make idle inquiries of him. Petitioner did not benefit from the tax savings during her brief marriage and received no alimony or property settlement afterwards. The size of the assessment pressed upon Petitioner is shocking to the conscience and violates the equity rule of Section 6013(e)(1)(D).

Respondent has violated the same rule of equity by not providing even the slightest indication why the IRS has not collected from Mr. Crowley who, as the IRS itself agrees, alone caused the deficiency. The IRS has given no reason for its relentless and shocking persecution of Petitioner by fair means and foul.

Respectfully submitted,

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